

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:12-CR-134-F1

UNITED STATES OF AMERICA

v.

LEE GUY,
Defendant.

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O R D E R

This matter is before the court on third-party intervenor Lumbee Guaranty Bank's Petition for Ancillary Hearing [DE-79]. Because hearings under 21 U.S.C. § 853(n) generally must be held within thirty days of filing the petition, *see* § 853(n)(4), the court immediately began reviewing its schedule and drafting an order setting the hearing when it received Lumbee Bank's petition. After the court spent some time preparing the order, the Government filed a "Response to Motion" [DE-81] in which it recognized the full interest of the Lumbee Bank as set forth in Lumbee Bank's petition, thereby obviating, in the court's view, the need for a hearing. Much of the work of counsel and the court with respect to this petition could have been avoided if Lumbee Bank simply contacted the Government prior to filing the petition and requested the Government's position with respect to the need for holding a hearing. To the extent practicable, the court requests that the parties work together in future cases to avoid filing unnecessary requests for hearings, as such requests require the court to review its schedule and find possible open dates to hold the hearing, review the applicable case law related to criminal forfeiture, and draft an order setting the parameters of the hearing.

In any event, the court finds that a hearing is unnecessary at this stage because the Government agrees that Lumbee Bank's interests in certain real property subject to the preliminary order of forfeiture are protected under § 853(n)(6)(A) and/or (B). *See* Resp. to Mot. [DE-81]. As such, Lumbee Bank's petition [DE-79], to the extent it requests a hearing pursuant to § 853(n) is DENIED AS MOOT.

The Government has also filed a Motion for Entry of Final Order of Forfeiture as to Personal Property [DE-78]. That motion is DENIED without prejudice to re-file a new motion for entry of final order of forfeiture that addresses all of the property in the preliminary order of forfeiture and addresses how Lumbee Bank's interests will be protected. The new motion should include a proposed final order of forfeiture similar to the proposed order attached to docket entry 78, but that includes reference to the real property and explains how the preliminary order of forfeiture is amended to protect Lumbee Bank's interests. *See* Fed R. Crim. P. 32.2(c)(2).

Finally, the court recognizes that the preliminary order of forfeiture becomes final as to the Defendant at sentencing and that the court needs to include a reference to the forfeiture when it orally announces the sentence and in the judgment. *Id.* at (b)(4). The court has prepared language that it will read at sentencing to ensure compliance with subsection (b)(4) and the court will also include a reference to the forfeiture in the final judgment. However, Rule 32.2 expressly contemplates that ancillary proceedings adjudicating third-party interests will continue after the Defendant's sentencing. *See id.* at (b)(4)(A) ("If the order [which becomes final at sentencing] directs the defendant to forfeit specific property, it remains preliminary as to third parties until the ancillary proceeding is concluded under Rule 32.2(c)."). Accordingly, there is no need for the Government to file its amended motion for final order of forfeiture before the

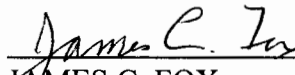
sentencing on December 5, 2013. In an effort to ensure timely resolution of this matter, the court will impose a deadline of **January 3, 2014** for filing the motion for final order of forfeiture, though the court will allow extensions if needed.

CONCLUSION

Lumbee Bank's petition for ancillary hearing [DE-79] is DENIED AS MOOT in light of the Government's consent to the validity of Lumbee Bank's interests. The Government's motion for final order of forfeiture [DE-78] is DENIED without prejudice to re-file as set forth above.

SO ORDERED.

This the 4th day of December, 2013.



JAMES C. FOX
Senior United States District Judge